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IBEW Local 387

BEFORE THE ARIZONA

CORPORATION COMMISSION

IN THE MATTER OF THE
APPLICATION OF NAVOPACHE
ELECTRIC COOPERATIVE, INC.,
AN ELECTRIC COOPERATIVE
NONPROFIT MEMBERSHIP
CORPORATION, FOR A
DETERMINATION OF THE FAIR
VALUE OF ITS PROPERTY FOR
RATEMAKING PURPOSES, TO FIX
A JUST AND REASONABLE
RETURN THEREON AND TO
APPROVE RATES DESIGNED TO
DEVELOP SUCH RETURN.

Docket No. E-01787A-11-0186

IBEW LOCAL 387'S
APPLICATION TO INTERVENE

Pursuant to A.A.C. R14-3-105(A) and (B), Local Union 387, International Brotherhood of Electrical Workers, AFL-CIO ("IBEW Local 387"), by and through undersigned counsel, hereby moves the Arizona Corporation Commission ("ACC") for leave to intervene as a party in the above-captioned matter.

IBEW Local 387 is "directly and substantially affected by the proceedings," *id.*, inasmuch as it is the exclusive representative of approximately sixty-three (63) employees

Arizona Corporation Commission
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[Signature]

1 of Navopache Electric Cooperative, Inc. ("Navopache").¹
2 Navopache and IBEW Local 387 have been parties to a long
3 series of collective bargaining agreements ("CBA"), dating
4 back to the early 1950s, concerning rates of pay, wages,
5 hours of employment, and other terms and conditions of
6 employment at Navopache. As a consequence of a contested
7 arbitration proceeding earlier this year, the result of
8 which is attached hereto as Exhibit A,² the parties' most
9 recent CBA now runs through the end of October 2011. IBEW
10 Local 387 represents all of the Navopache employees listed
11 in attached Exhibit B.

12 Based on the above, IBEW Local 387 not only has a
13 direct interest in the outcome of this case, but there is a
14 substantial risk that if IBEW Local 387 is not permitted to
15 intervene into the above-captioned matter, its unique
16 interests may be impaired. In particular, and as set forth
17 in greater detail in Decision Number 71859 as well as
18 attached Exhibit A, IBEW Local 387 has suggested for quite
19 sometime now in a variety of fora that it is in the public
20 interest for Navopache to substantially raise its rates.

21
22 ¹ It is worth noting that this is fourteen (14) employees
23 less than the seventy-seven (77) employees represented by IBEW
24 Local 387 on April 8, 2010, the date it sought intervention in
25 Docket Number E-01787A-05-0719. In the opinion of IBEW Local
26 387, this hemorrhaging of Navopache's workforce itself
27 demonstrates the necessity for the ACC to promptly, and
28 significantly, increase Navopache's rates in order to promote and
ensure safe and reliable service.

29 ² By referencing it herein, IBEW Local 387 does not mean to
30 suggest that it agrees with all of the findings or the ultimate
31 disposition of the interest arbitration. In at least several
32 respects, it does not.

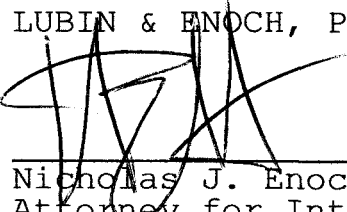
1 After having gone through the analysis mandated in ¶18 of
2 Decision Number 71859, p. 4, it appears that Navopache's
3 Board of Directors has come to a similar conclusion.
4 Indeed, at this point in time IBEW Local 387 openly wonders
5 if Navopache's proposed increase of 7.16% is too modest
6 given the realities of the situation. That issue, however,
7 will be addressed more fully in the months to come.

8 Because Article XV, § 3 of the Arizona Constitution
9 expressly provides that "[t]he Corporation Commission
10 shall... make and enforce reasonable rules, regulations, and
11 orders for the convenience, comfort, and safety, and the
12 preservation of the health, of the employees and patrons of
13 [public service corporations]," IBEW Local 387 is confident
14 that its participation in this proceeding will not unduly
15 broaden the topics presented herein. Similarly, because no
16 existing (or potential) party adequately protects the
17 interests of IBEW Local 387, it is confident that its
18 participation in these proceedings will lead to a more well-
19 reasoned decision on the part of the ACC.

20 **WHEREFORE**, it is respectfully requested that IBEW Local
21 387 be permitted to intervene in the above-captioned matter
22 as a party.

23 RESPECTFULLY SUBMITTED this 10th day of August, 2011.

24 LUBIN & ENOCH, P.C.

25 
26 _____
27 Nicholas J. Enoch, Esq.
28 Attorney for Intervenor-Applicant
IBEW Local 387

1 Original and thirteen (13) copies
2 of IBEW Local 387's Application
3 to Intervene filed this 10th day
4 of August, 2011, with:

5 Arizona Corporation Commission
6 Docket Control Center
7 1200 West Washington Street
8 Phoenix, Arizona 85007-2996

9 Copies of the foregoing
10 transmitted via e-mail
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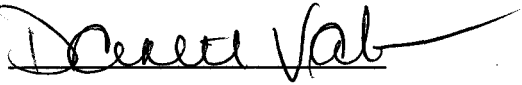
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6 

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In the Matter of Arbitration

Between

International Brotherhood of Electrical Workers, Local 387, Union

And

Navopache Electrical Cooperative, Employer

**Opinion and Award
Richard Fincher, Arbitrator**

Direct Appointment

Interest Arbitration: Last, Best Wage Offer

Dated February 7, 2011

Jurisdiction and Appearances

This interest arbitration is in accordance with provisions of the Agreement between IBEW Local 387 and Navopache Electric Cooperative. The matter was heard on December 7, 2010 in Phoenix, Arizona. The parties stipulated the Arbitrator had jurisdiction to hear the matter and must select among the two final wage offers. A transcript was taken and produced for the parties and Arbitrator. Post-hearing briefs were timely submitted to the Arbitrator. The record closed on January 8, 2010.

The Union was represented by Stanly Lubin, of Lubin and Enoch PC.

The Employer was represented by Thomas Kennedy, of Sherman and Howard.

Issue Presented

Which last wage offer is best:

The last, best wage offer of the Union, or the last, best wage offer of the Company?

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Union last, best wage offer

Last wage offer

- Year one-1% retroactive to November 2009
- Year two-1% retroactive to November 2010
- Year three-3% effective November 2011 through expiration

Company last, best wage offer

Last wage offer

- Year one-0% in 2010
- Year two-0% in 2011
- Year three-wage reopener on November 1, 2011

Witnesses

Gerard Vandever, Business Manager

Ed Junas, Business Representative

Brian Brownlow, Steward

Consultant Norman Kur

Counsel William Sullivan

CEO David Plumb

Operations Manager Kevin Street

Relevant arbitral standards

The parties stipulated to the following criteria to be applied by the Arbitrator (not prioritized or weighted).

- Common sense
- Wage rates of comparable employers
- Changes in cost of living
- Benefits (including insurance and pensions) received by employees, as well as continuity and stability of employment
- Ability of employer to pay
- Interest and welfare of the public

Background

This case arises from an impasse in negotiations between Navopache Electric Cooperative (Company) and IBEW Local 387 (Union). The parties stipulated the Arbitrator is to decide this issue "baseball style," by selecting either the Union's or Company's last proposal without modification.

Summary of the Facts

The Company is a distributor of electricity to regional commercial and residential customers. The customer base includes 40,000 meters, covering east-central northern Arizona and the western part of New Mexico. The Company is governed by a Board of Directors. There are differences between a coop and an investor-owned utility. An investor-owned utility is owned by its shareholders. Arizona Public Service (APS) is the largest investor-owned (publicly traded) electric utility in Arizona. APS sells stock, pays dividends, and shareholders have an ownership interest. On the other hand, a cooperative is a not-for-profit organization owned by members of the cooperative residing in the service area. Utilities do not set their own prices to customers. Rate-making is primarily governed by the State of Arizona Corporation Commission (ACC).

Status of labor negotiations

The Union represents certain field and office personnel within the workforce. The prior Agreement expired on October 2009, and the contract has continued in effect. Mediation was not successful. The wages for bargaining unit employees have been frozen at pre-existing levels. Similarly, the wages for all non-bargaining unit employees have been frozen, with two exceptions. The Company is not seeking wage or benefit concessions. The Union argues the Company has created this impasse due to their failure to seek rate increases over the past decade, while other comparable utilities have sought and received rate increases. Union testimony is that the entire cost of their proposed three year wage increase would be \$438,507 for 118 union and non-union employees.

Revenue growth and revenue decrease

There is no dispute over historical kilowatt sales growth of the Company. Between 2000 and 2008 there was a steady pattern of growth. In 2002, the rolling 12 month sales was \$328 m, growing to \$344m in 2003, \$346m in 2004, \$383m in 2006, and \$412m in 2007. Then, in late 2008 came the economic crisis. In June 2008, sales peaked at \$435m. Since 2008, sales have dropped to a low of \$418m in February 2010, and now around \$422m. Company CEO Plumb testified customer electric usage has dropped during the recession and a major customer (a lumberyard) closed in 2010 and owes \$160,000. Forecasting 2011 revenue, CEO Plumb testified he saw no reason to expect a sales increase over 2010 revenue, and that the Company is not on the verge of a financial recovery. Most cities and employers in the Company territory have decreased staffing or otherwise reduced their budgets, including energy costs.

Cost reduction measures

The three primary elements of the Company's balance sheet are purchasing power, payroll, and depreciation. The next largest internal costs are benefits and interest. The Company's financial health has been adversely impacted by the decline in revenue. The Company has not replaced aging equipment. The Company has implemented several cost reduction actions, including wage freezes (except for step increases), a fifty percent reduction in travel, and retirement incentives for three non-union staff (whose jobs will not be replaced). After these reductions the budget was still not balanced, so the Company laid off four union workers. Even bottled water was eliminated. CEO Plumb testified none of these budget cuts will be reinstituted in 2011.

Financial TIER (time/earnings/interest ratio) rating

TIER is a core financial metric in the industry. TIER is a ratio of the margins plus interest expense, divided by the interest expense. The rating is important to the Board and is also a concern due to covenants with lenders. A higher TIER rating is preferable over a lower trending number. The Company's TIER rating has decreased since the recession. The Company net TIER metric (including interest) has dropped from a high in 2007 of around 2.25, to a low of around 1.15 in March 2010. Falling below a TIER of 1.25 for two out of three years creates a technical default.

Company history of seeking rate increases

On January 19, 2001, the Company filed an application with the ACC for a permanent rate increase. That application led to a December 28, 2001 decision by the ACC granting an increase of 10.12%. Since that date, the Company has not sought another adjustment in the rates it charges for power. CEO Plumb denied the Company has been slow to seek a rate increase over time, due to the Company's strong financial health and TIER rating. He explained the TIER was increasing in years preceding the recession. The Company is currently studying the filing of a petition with the ACC for a rate increase, and has hired C.W. Guernsey & Company to develop cost of service data.

The Union argues the Company has imprudently failed to seek a rate increase since 2001, despite the fact that its rate of return on its investment and its TIER rating has been declining since May, 2008, from a 12 month rolling average of 2.26 to 1.29 in August, 2010. Despite this drop, the Company made no effort to seek a rate increase until the Union forced its hand this past summer concerning a construction project. Only then did the Company begin the study that will lead to the filing of an application for a rate increase.

Comparable employers

The parties agree that comparable employers are not investor-owned, but rather electric utility cooperatives in Arizona. The five rural electric utility cooperatives (the comparables) are Mohave Electric, Sulphur Springs, Graham County, Duncan Valley, and Trico. Some Arizona cooperatives have applied for and received rate increases. In 2008, Graham County received a rate increase of 7.18%,

within four years of their prior increase. In 2009, TRICO received a rate increase of 8.01%, within three years of their prior increase. These increases have enabled those utilities to maintain acceptable TIER ratios of 2.0 and 1.83 respectively. No history from the three other comparable Coops was entered into the record.

Employee turnover

Testimony was highly disputed concerning the amount for turnover in the journeyman lineman title (the benchmark job), and the reasons for such turnover. The Union argues turnover has been 100% over many years due to low wages. In contrast, the Company argues turnover has not been excessive over the years and recent apprentices have stayed with the Company. Union witnesses acknowledged most moves have been to APS, whose operations border the Company, and pay more as a publicly traded company. Steward Brownlee acknowledged the moves are not due to benefits, which are comparable between the Company and APS.

Testimony as to ratemaking process

Company Expert Witness Sullivan testified the ratemaking process with the ACC can take a total of 18 months, between internal preparation and time with the Commission. The rate proposal is based from a "test year," reflecting the Coop's prior 12 months of operating revenue, expenses and margin. The consultant formalizes the application and presents it to management. The Company Board must vote to approve the rate application being submitted to the ACC.

After submission to the ACC, the rate application is assigned to an Administrative Law Judge in the ACC, who conducts a formal hearing, with the potential of opposing Interveners. The ALJ issues a recommendation and exceptions may be filed. The final application goes to the full ACC for approval. The ACC has significant discretion in accepting the "test year." The ACC may disallow expenses and reverse out designated lines with capital expense. Two financial terms applied in the review are TIER and debt service coverage. The ACC may ignore wage increases outside of the test year and may disallow certain wages increases (apparently executive wages) due to reasonableness.

Expert Sullivan further testified the Commission considers the economic times. For example, the ACC has mentioned the poor economy as a reason to grant what they consider the lower end of the band of reasonableness for the rate increase. Expert Sullivan estimated that any potential rate increase for the Company would not start until mid 2012. The rate increase is effective (only for Arizona customers) on the first customer billing period after approval. After approval by the ACC, the Company would seek approval for the same increase from New Mexico.

Summary of Union Argument

This arbitration presents a classic case of poor management making the wrong decisions and then expecting others to take the hit. Here, the error was to ignore the consistent shrinkage of profit generated from the sale of power to a steady customer base and the resultant reduction of the TIER.

The Company's claim it cannot afford a wage increase is untenable. The ACC will allow a utility to add expenses tied to a guaranteed raise in pay to the test year in a rate case if they are reasonable in amount and are required to be paid by an agreement. The Union established the ACC has held that where a utility has entered into a CBA with a union in which it had committed to a future wage increase in a reasonable amount, the cost of that raise can be added to the approved costs of the test year in calculating what increase to allow the utility to charge.

Expert Witness Kur calculated the hypothetical amount that would be available for a wage increase to every employee (union and non-union) should the Company receive a rate increase in the same percentage as Navopache received in a hypothetical rate increase. He also performed the same calculation using the percentage increases awarded by the ACC in the three cases involving cooperatives identified earlier in the hearing. His testimony highlighted the reasonableness of Local 387's actual requested increases.

Comparing the cost of labor between Company workers and other utilities is not conclusive. First, the evidence was not sufficient to reach any conclusions regarding wage or benefit comparability. The cost of benefits for a lineman employed by NEC is provided in great detail. However, no such evidence was provided for any other position within the bargaining unit nor for any employee of any other company. Thus, the true cost of labor cannot be compared. The Union submits there is no purpose in engaging in a wage or benefit comparison.

The Union established increases in the cost of living to compel a wage increase. The US Department of Labor website indicates the cost of living (COL) changes averaging approximately 1% per year. Over the past two years the employees have received no increase in pay. Clearly, the Union's position is the more equitable one.

The Union established the public welfare is best served by its proposal. One way the ACC assures the public that appropriate levels of service is being provided is to ensure that a utility maintains a stable workforce of employees who are well trained and experienced. It is the duty of the ACC to protect the employees of a utility from the effects of misjudgments by a governing board such as the one here where those errors can unfairly impact them. With all due respect to the management threat to institute layoffs should Local 387 prevail here, the Union simply does not believe that layoffs will, or for that matter, can be instituted.

The Union believes that it has proven its case and that the modest economic package that it has proposed should be adopted. The Company Board has made serious errors in its refusal to seek a rate increase since 2001, and is now trying to have the employees pay for those errors. Common sense dictates the application of the criteria should result in an award in favor of the Union.

Summary of Company Argument

The Company has established their wage proposal is most consistent with the criteria and common sense. The Company does not have the ability to pay the increase in wages. The Union does not disagree the Company is facing an economically daunting climate.

Though hindsight is always 20/20, there is no cause to question the judgment of past Boards of Directors. No Board culpability was established in the record.

There is no evidence to suggest a material increase in revenue or profits in the near future. The Navopache service area has been particularly hard hit, with unemployment rates of over 15%, compared to 9.8% nationally. City sales taxes have also declined and not recovered.

The Company already pays above comparable Coop employers in Arizona. Other than Trico, based in Tucson, Navopache's wage rates for journeymen linemen (a benchmark position) are significantly above those of its peers. Indeed, the peer group needs to "catch up" to the Company in pay levels.

While the Company's wage proposal does not provide for an increase in 2010 or 2011, the Company has borne and will continue to bear considerable benefit costs for unit employees. RS pension contributions, 401(k), and insurance costs have continued to mount and be absorbed by the Company.

Cost-of-living is not a factor. The inflation level is a meager 1.2% in the past 12 months.

The record did not establish any guarantee the Company will be granted a rate increase by the ACC within the near future, and did not guarantee any percentage rate increase. There are numerous risks of delay.

Any ACC rate increase is not retroactive. The Union's request for retroactivity only exacerbates the economic injury. In contrast, the Company's wage proposal manifests fiscal responsibility. It calls for a wage reopener when it would hopefully know the likely result of any ACC decision on a rate application which may be filed.

The testimony of Union Expert Witness Kur has no credibility and consisted of simple math. His exhibits purport to show a required rate increase to provide for requested payroll increases. However, he admitted he has never performed a rate study for coops, and did not know the TIER, DSC or rate of return on fair value rate base the Commission allowed for each of the three cooperatives. He had no factual basis for asserting that the full amount of approved increases is available to pay for wage increases.

The interest and welfare of the public and the Coop members militates in favor of the Company. A wage increase would place Navopache's creditworthiness in jeopardy if it were to be required to increase wage rates in economically recessionary times and in the midst of layoffs designed to achieve a balanced budget. Finally, common sense dictates an award finding for the Company.

Discussion

Arbitration of interest disputes is viewed more as an instrument of collective bargaining, rather than as a process of adjudication. Arbitration of interest disputes significantly differs from arbitration of grievance disputes. In addressing grievance disputes, the Arbitrator determines existing contract rights while applying well-established standards. In contrast, interest arbitration determines an equitable answer to what the parties have not been able to resolve by themselves. The Arbitrator's role is to reach a solution that will be satisfactory enough for both sides to be workable. Interest arbitration in the private sector is not legislatively mandated; rather, it is voluntarily consented to by the parties.

In some labor Agreements, the contract provides criteria to be observed by the Arbitrator. Here, no criteria exist in the Agreement but several have been stipulated by the parties, including the criteria of common sense. Prevailing practice refers to the arbitral standard of considering comparisons to other peer labor-management Agreements. The theory is that disputants would logically adopt the negotiated results of other similarly situated parties. Here, limited evidence from other Arizona Coop utilities was entered into the record.

Arbitral research from interest arbitration awards indicates the three commonly most weighted criteria are (1) wage and benefit comparisons with peer companies; (2) increases in the cost of living; and (3) employer's "ability to pay." Where either of the first two factors is compelling, the arbitrator will generally not be dissuaded by claims of financial inability. Conversely, where the first two factors are not compelling, the arbitrator will focus more on the merits of "inability to pay."

Arbitral view of the employer's "ability to pay" a wage increase

While acknowledging the Cooperative is a private sector entity regulated by state government, a review of public sector awards involving interest arbitration is instructive. According to arbitral research, the issue of "ability to pay" is not commonly raised by disputants, because public employers recognize the

difficulty of persuading arbitrators that they cannot pay more than they are offering. Paying more may require a reordering of budget priorities, new taxation, borrowing, reductions in force, or curtailment of services; but it can usually be done. If the employer chooses to maintain its budget, a wage increase would necessitate borrowing and perhaps tax increases. Arbitral awards distinguish between the employer's "inability to pay" versus their "unwillingness to pay."

Here, the Company asserts an "inability to pay," until the anticipated rate increase is granted by the ACC. But what does the Company mean? The Company is apparently acknowledging that "but for" their distressed financial condition, the Union's request is fair and reasonable. In the extreme case it means they believe they have reached their limits of fiscal control principles and are precluded from additional spending or borrowing. The assertion also suggests the Company does not prefer to alter budget priorities in ways deemed undesirable, perhaps resulting in curtailment of services and more layoffs.

In assessing a public employer's "inability-to-pay argument," several considerations should be taken into account. First, if the employer has taken significant actions to reduce expenditures and to ensure the "misery" is being distributed across the board, an interest arbitrator should place more weight on an employer's "inability-to pay" argument.

Second, consideration should be given to the Company's history of staying financially viable and able to pay fair wages. An arbitrator is more likely to order an employer to pay more in wages and benefits, even when there are no funds available in the current budget, if the employer has not made sufficient taxing efforts as measured against comparable communities. Employers will not prevail with "inability to pay" arguments unless they can show that the raising of additional revenues involves greater difficulties than merely making an unpleasant political decision. (Here, the Arbitrator notes that the Company cannot increase its customer rates on its own volition, unlike the typical taxing body such as a city or state)

Third, consideration should be given to the employer's ability to attract and retain employees. If the employer has had no difficulty in recruiting new employees and that employee turnover is within or below normal bounds, more weight would be accorded to the employer's "inability-to-pay" contention. Fourth, employers should not be allowed to assert the "last-in-line" argument, in which they infer that since all other obligations were paid, "whatever is left" should be given to employees, and if that is not enough to fund an increase in wages, that is just too bad.

Fifth, the "ability-to-pay" criterion does not require employees to bear a disproportionate share of belt-tightening. Employers always argue their position will avoid layoffs, but absent a willingness on the Union to subsidize government in this manner, the arbitrator must grant an otherwise reasonable wage

increase, notwithstanding the impact on employees who may be laid off, because the public is not entitled to get more services from its employees for less money.

Anticipated outcome of rate application

This Arbitrator anticipates the Board will file a rate application and will eventually be granted a rate increase from the ACC. Further, this Arbitrator anticipates a rate filing will be submitted in summer 2011 and will require one complete year for approval, or until summer 2012. From there, a rate filing will be made to the New Mexico Commission and will require another complete year, or until summer 2013. However, the Arbitrator cannot confidently estimate the increase rate to be granted by the ACC. The Company services a lower income area (including a tribal reservation) with high unemployment, decreasing the likelihood of a significant increase by the ACC.

This Arbitrator finds the testimony of Mr. Kur credible to the extent the ACC has held that where a utility has entered into a CBA with a union (in which it had committed to a future wage increase in a reasonable amount) the cost of that raise can be added to the approved costs of the test year in calculating what increase to allow the utility to charge. There is no evidence to suggest a one percent wage increase would be found not reasonable for inclusion in the test year.

Wage rates of comparable employers

Arbitral decision-making places significant weight on comparability of wages. Here, the "journeyman lineman" job classification is accepted as a benchmark title for purposes of comparison. However, the Union argues (in its post-hearing brief) the record did not establish sufficient data for proper analysis, as no detailed financial information was produced to evaluate wages between the peer Coops. In contrast, the Company argues sufficient evidence was entered to establish the Company pays wages above the comparable employers. CEO Plumb testified as to the Company's decision to evaluate its wage competitiveness based from a single benchmark job of journeyman lineman. He also described the history of wage increases for this benchmark job. During the 2006-2009 labor agreement, the position of journeymen lineman was paid \$33.27 per hour on November 1, 2006, and advanced over \$2.00 by November 1, 2008.

The parties agree that comparable employers are not investor-owned, but other electric utility cooperatives in Arizona. The five other rural electric utility cooperatives in Arizona (the comparables) are: Mohave, Sulphur Springs, Graham County, Duncan Valley, and Trico. The Company entered an exhibit indicating the journeyman lineman is currently paid \$35.38 per hour, and only Trico pays more per hour. The Company's overall wage position is in the upper quartile (25%) among the comparable cooperatives. The Company entered a second document of a National Compensation Survey including lineman journeymen, indicating the Company pays above the state, regional and national wage levels. In

the hearing, the Union did not contest this conclusion. Union Business Agent Vandever testified as to his knowledge of the recent collective bargaining agreement with Unisource (not a comparable), which expires in 2011 and gave a wage increase in 2010. The Union offered into evidence their testimony of a recent collective bargaining agreement with Graham County, which expires in 2010 but did not give a wage increase in 2010, but has a wage reopener in 2011. No documentation was provided as to these two Agreements or status of the other comparable Coops.

On this record, I find the journeyman lineman job to be an accepted benchmark across the comparable Coops, and find the Company's current wage rate at or above the peer group of employers. There was no testimony in the hearing suggesting that the wage data or testimony was incomplete, misleading or otherwise not credible for consideration.

Benefits of comparable employers

Arbitral decision-making places significant weight on comparability of benefits. However, the Union argues (in its post-hearing brief) the record did not provide sufficient data to compare the peer Coops in Arizona. The Union observes the cost of benefits for a lineman was provided in great detail, but no data was provided for any other position within the bargaining unit nor for any employee of any other company. In contrast, the Company argues sufficient evidence was entered to establish they pay benefits comparable to other Coop employers in Arizona. CEO Plumb testified there have been no reductions in insurance or retirement benefits during the recent cost reduction efforts, and the Company is not seeking concessions. The Company entered an exhibit into evidence illustrating the range of worker benefits, including retirement, 401(k), vision, dental, and medical. Union Steward Brownlee testified the benefits between APS and the Company are basically the same. In the hearing, the Union did not contest this conclusion. There was no other testimony comparing the Company benefits program versus the benefit program of the other five utility comparators.

On this record, I find the current level of benefits for journeyman lineman to be representative of the Company's entire workforce, and for those benefits to be at or above the peer group of other electric Coops. There was no testimony in the hearing suggesting that the produced benefit data or testimony was incomplete, misleading or otherwise not credible for consideration. When (as here) parties agree on a benchmark job for purpose of comparing wages, the parties normally include benefits in that consideration.

Continuing financial contributions by Company for benefits

Despite an impasse in negotiations, CEO Plumb testified the Company's retirement security (RS) pension plan and medical insurance plans both saw increases in 2010. The RS plan was underfunded as a result of what occurred in the stock market. Accordingly, Navopache incurred about a 35% increase in its contribution to that plan. CEO Plumb testified the Company had about a 15% increase in its contribution

to the employee benefits medical plan in 2010, and these costs were incurred by the Company. He testified he estimates a 7% increase in medical costs in 2011, to be paid by the Company. He also testified the Company has a 401(k) retirement fund for workers, and is still making contributions to the fund. This testimony was not disputed by the Union. On this record, I find the Company's ongoing financial payments for retirement and insurance to be real and substantive, and a factor for consideration. This Arbitrator notes many employers have recently reduced benefits or demanded increased contributions from workers.

Change in cost of living

Arbitral decision-making places significant weight on this criterion. Here, the parties presented consistent data but conflicting conclusions. This Arbitrator notes that there are numerous cost of living indexes, measuring different variables. Based from the US Department of Labor website, the Union argues the cost of living has increased 3% in three years and supports their wage proposal. Over the past two years the employees have received no increase in pay. The Union argues that if the COL continues its very modest rate of increase (of 1% per year), and if the Arbitrator rules in favor of the Company, the employees will lose approximately 5% to the COL before they can even return to the bargaining table for the proposed third year reopener. In contrast, the Company argues there has not been a material increase in the recent cost of living to trigger this criterion. The Company submitted a Bureau of Labor statistics (BLS) exhibit establishing an All Urban Consumer Price increase of 1.2% in the past 12 months, dated November 2010. The exhibit explains "over the past year, the index for all items less food and energy has risen .6 %, the smallest 12 month increase in the history of the index, which dates back to 1957." The Arbitrator takes note that the US Social Security Administration did not find a material cost of living (COL) increase in the past year.

On this record, I find the rural COL has increased a modest amount, but far less than in traditional inflationary times, which normally trigger this criterion.

Continuity and stability of employment with current wage levels

Testimony was highly disputed as to whether the Company has suffered from "excessive" turnover of journeyman lineman due to the Company's current wage levels. The Union argues this criterion is highly relevant and evidence revealed that low wages are prompting high turnover of journeyman lineman. In contrast, the Company argues that staff turnover is not unusual and is not related only to wages. The parties stipulated that APS (the largest investor-owned utility and key union employer) has had a hiring freeze for journeyman lineman since 2008, which presumably has eliminated turnover to APS.

Union Business Agent Junas testified he made a data request of the Company concerning staff turnover and received information on 13 resignations over time, or about 2 to 3 per year. He acknowledged there are many reasons why employees have left the Cooperative, but he was told it was mostly money. He

knows some employees who went to APS, presumably for higher wages. Union Steward Brownlee testified two former linemen told him they left for APS after their apprenticeship. A full apprenticeship may cost \$250,000 for the entire program. He also testified some journeyman have left due to frustration with protracted labor negotiations. The parties stipulated that Union Officer Williams would testify to the same observations as Union Steward Brownlee.

In contrast, Company CEO Plumb testified the Company does not have a serious problem with worker turnover due to wages. He mentioned two workers have completed the apprenticeship program, and are still with the Company. Company Operations Manager Street testified the Company has lost linemen, as well as other cooperatives, and the reason is not always wages. All of the Navopache linemen work for him. One APS lineman moved to the Company. Manager Street testified, "Navopache did lose linemen and apprentices at the same time the utility industry as a whole was losing linemen and apprentices. It was very common; apprentices were going to wherever they could get an apprenticeship program. In other words, what was occurring at Navopache was no different than what was occurring at any other coop or utility."

On this record, I find the testimony of Manager Street to be more credible because it was based on first-hand knowledge. Indeed, the Company has lost many skilled workers over several years, but for a variety of personal and financial reasons. APS is clearly the prime utility company in Arizona and is a more attractive employer. The fact that one APS lineman came to work at the Company illustrates the variety of reasons for changing jobs. Therefore, I find the current wage level of journeyman lineman is not, by itself, creating an excessive level of worker turnover. Given that the Company's wage level is already in the upper 25% quartile of comparable employers, I do not find adoption of the Company proposal would exacerbate the turnover problem.

Ability of employer to pay

As described above, there is substantial arbitral perspective on how to evaluate the "ability to pay" criteria in interest arbitration. Here, the Union argues the Company has the "current ability to pay," and a wage increase would not result in reductions in force. The Union further contends the Company entered negotiations with a mindset of rejecting any wage increase. In contrast, the Company argues it does not have the "current ability to pay," and a wage increase would place its creditworthiness in jeopardy and force more drastic measures, including further reductions in staff.

Recent cost reduction efforts and "spreading the misery"

The Company has implemented several cost reduction steps in 2010, including a ten percent cut in the Board's reimbursement rate, a freeze on salaried and union salaries, eliminating the COO position, a fifty percent reduction in travel, and a reduction of three office employees through early retirement. The

Company took other measures like eliminating bottled water in the office, consolidating cell phone plans, and reducing supplies for offsite first aid cabinets. Then, the Company laid off four bargaining unit workers: a truck driver, a meter reader, and two ground men tree trimmers. The Company has published a newsletter to employees and Coop members describing these cost reduction efforts. Union Business Agent Junas testified the Board has recently accepted a ten percent cut in reimbursement totaling \$1920 per year. On this record, I find the Company has sufficiently "spread the misery" of cost reduction efforts across the entire workforce.

Local economic indicators of economic recovery

There is no dispute the economic condition of the Company's geographic territory is struggling. The Company submitted numerous exhibits from the US Bureau of Labor Statistics (BLS) establishing high unemployment in Apache County and the ShowLow metro area. The unemployment rate for Show Low was 15.1% in September, 2010. The unemployment rate in Navajo County was 15.1% in September, 2010, and the unemployment rate in Apache County stood at 15.5% in September, 2010. On this record, I find no evidence of a regional economic rebound (including electric sales) in this year or next year.

Probability of further reductions in force

As indicated above, the threat of layoffs caused by a wage increase is not a reason, per se, for the Arbitrator to not grant the wage increase. The Union knows what it is asking for and believes the Company could not lay off more employees to maintain service levels required by the ACC. However, unlike most interest arbitrations, here lay-offs are not a pale threat but have already occurred to four bargaining unit workers. Unlike a city or state government, the Company cannot automatically raise taxes to avoid layoffs. On this record, I find CEO Plumb credibly testified that reduced staffing (both salaried and union) would likely be required to balance the budget after a wage increase.

Roll-up costs from a wage increase

The record established that several benefits are linked to wage levels (401(k), vacations, holidays, life insurance, etc). Although neither party emphasized the automatic roll-up costs of granting a wage increase, the Arbitrator notes that most benefit cost increases are at least 15%.

Interim funding required by a potential wage increase

Union witness Kur testified the Company (prior to the prospective rate increase in 2012) would have to find money from existing operating expenses to fund the wage increase. He stated that the Company would need to seek funds (amounting to \$438, 507 over three years, minus any rate increase) from either lending or operating efficiencies. He agreed that loans are not readily available to coops for day to day operating expenses. In contrast, Company CEO Plumb testified that the largest expense for the Cooperative is the purchase of electricity, followed by payroll. He asserted that the Company would have to reduce (RIF) workers in order to pay for a wage increase prior to a potential rate increase in 2012.

Finally, testimony suggested the Company would have difficulty obtaining a loan due to their current TIER rate.

On this record, I find the Company's rationale as to why they do not currently have the financial ability to pay a wage increase to be more credible.

Equitable factor of alleged poor planning by management

The Union asserts an equitable argument: the Board's prior poor planning has now caused financial harm to members. In its brief, the Union states "there is no excuse for the Company's refusal to apply for a rate increase during the past three or four years," as the TIER declined by 20%. In contrast, the Company asserts the Union appears to be essentially second-guessing the Board the past decade, arguing the Board should have sought a rate increase, despite the fact that multiple Boards saw no need to initiate the costly, time-consuming and unpredictable application process to the ACC. Company witness Sullivan estimated the minimum cost of filing a rate increase is \$150,000

Poor planning by the Company is not an explicit factor to be applied by the Arbitrator. However, the Union's argument has merit under the common sense criteria. With interest arbitration in the public sector, a city cannot hide from its obligation to pay a wage increase just because the politicians refuse to raise taxes. Here, the Union argues poor planning by the Board in two respects, from 2002 to 2008 (during the growth years), and then during 2008 and 2009, when the scope of the recession was in plain view. However, the record suggests only two of the comparable employers filed for a rate increase since 2002, those being Graham County and Trico.

On this record, I find the Company credibly explained that their sales growth and TIER level from 2002 through 2007 did not suggest a rate increase was needed. However, I find the Company did not credibly explain why they did not seek a rate increase in 2008 or 2009, other than the burden and cost of the process.

Common Sense

The term "common sense" refers to "sound practical judgment independent of specialized knowledge or training; normal native intelligence." Beyond all of the prior deliberation, how does common sense apply to this dispute? On one hand, common sense justifies a modest wage increase for workers with families and expenses. The workers are skilled, committed, and productive. Cost of living has been modest but still diminishes purchasing power. The Union credibly questions why the Company did not seek a rate increase in 2008 or 2009, when the depth of the recession was clear and their TIER rating dropped to unacceptable levels. The interest and welfare of the public speaks to paying utility workers a fair salary to maintain morale and reduce turnover.

On the other hand, common sense for the Company suggests they are in financial trouble and need time before absorbing the wage increase and roll-up. Presumably, the Company will seek and receive a rate increase, but testimony reveals the rate-making process (when and how much) is uncertain at best. Equally concerning is how the Company would find interim funding (presumably loans) to pay for a retroactive wage increase, with their current low TIER level.

Summary

As explained above, the primary criteria for interest arbitration of wage disputes is comparability with peer employers. The theory is that disputants would logically adopt the negotiated results of other similarly situated parties. Here, the Company pays above the average of its peer group. Likewise, the Company provides benefits at or above its peer group. While significant turnover has occurred over many years, there is no evidence the Company's turnover is different than its peer group. Cost of living has increased modestly but not in an inflationary amount. Apparently, only two of the peer group has sought rate increases lately; suggesting the others have not accepted the need.

Of course, different facts might produce different results. This Award might be different if a Board-approved rate application had already been submitted to the ACC, if the cost of living was inflationary, if cost reductions were merely a threat, if the Company had the right to increase rates on its own, or a financial recovery for the Company was forthcoming.

Award

The proposed wage offer of the Company is the best and final offer.

Respectively submitted

Richard D. Fincher, Arbitrator,

February 7, 2011

A handwritten signature in cursive script, appearing to read "Richard D. Fincher".

**LOCAL UNION NO. 387 of the INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS**

Navopache Electric Cooperative, Inc.
union contract wages

Nov. 1
2009

Nov. 1
2010

Nov. 1
2011
To be determined,
wage rate reopener
negotiations

EXHIBIT A

1500	Area Service Representative	39.62	39.62
1510	Communication Electronic Tech		
1511	Comm Electronic Tech (1st year)	28.07	28.07
1512	Comm Electronic Tech (2nd year)	29.27	29.27
1513	Comm Electronic Tech (3rd year)	30.39	30.39
1514	Comm Electronic Tech - Journeyman	33.25	33.25
1515	Comm Electronic Tech - Lead	35.39	35.39
1540	Class "A" Serviceman	26.77	26.77
1560	Foreman II	39.62	39.62
1570	Groundman		
1571	Groundman, Pre-Apprentice Groundman, PreApparatus Tech. Groundman (1st year)	21.19	21.19
1572	Groundman, Pre-Apprentice Groundman, Pre- Apparatus Tech. Groundman (2nd & 3rd year)	22.97	22.97
1573	Groundman, Pre-Apprentice Groundman, (after 3rd year)	23.49	23.49
1580	Jackhammerman	26.69	26.69
1590	Laborer		
1591	Laborer 1st 3 months	15.94	15.94
	Apprentice Polyphase/Substation		
	Apprentice (1 st 6 months)	24.94	24.94
	Apprentice (2 nd 6 months)	25.76	25.76
	Apprentice (3 rd 6 months)	26.60	26.60
	Apprentice (4 th 6 months)	27.43	27.43
	Apprentice (5 th 6 months)	28.26	28.26
	Apprentice (6 th 6 months)	29.09	29.09
	Apprentice (7 th 6 months)	29.93	29.93
	Apprentice (8 th 6 months)	30.76	30.76
	Polyphase/Substation - Journeyman	33.25	33.25
1600	Apprentice Lineman		
1601	Apprentice Lineman (1st 6 months) (4/9/07)	26.53	26.53
1602	Apprentice Lineman (2nd 6 months)(4/9/07)	27.42	27.42
1603	Apprentice Lineman (3rd 6 months) (4/9/07)	28.31	28.31

1604	Apprentice Lineman(4th 6 months) (4/9/07)	29.19	29.19
1605	Apprentice Lineman (5th 6 months) (4/9/07)	30.08	30.08
1606	Apprentice Lineman (6th 6 months) (4/9/07)	30.96	30.96
1607	Apprentice Lineman(7th 6 months) (4/9/07)	31.84	31.84
1608	Apprentice Lineman (8th 6 months) (4/9/07)	32.72	32.72
1609	Lineman – Journeyman (4/9/07)	35.38	35.38
1610	Lineman –Foreman I (4/9/07)	37.86	37.86
1620	Shop Foreman	34.18	34.18
1630	Auto-Mechanic - Journeyman	31.02	31.02
1640	Mechanic Hire	26.35	26.35
1650	Mechanic Apprentice		
1651	Mechanic Apprentice (1st 6 months)	23.26	23.26
1652	Mechanic Apprentice(2nd 6 months)	24.04	24.04
1653	Mechanic Apprentice (3rd 6 months)	24.81	24.81
1654	Mechanic Apprentice (4th 6 months)	25.59	25.59
1655	Mechanic Apprentice (5th 6 months)	26.37	26.37
1656	Mechanic Apprentice (6th 6 months)	27.14	27.14
1660	Meterman Polyphase -Journeymen	33.25	33.25
1670	Meterman Polyphase -Lead	35.39	35.39
1675	Journeyman Electrician Metering (1 st Six Months)	29.93	29.93
1676	Journeyman Electrician Metering (2 nd Six Months)	30.75	30.75
1677	Journeyman Electrician Metering (3 rd Six Months)	31.59	31.59
1678	Journeyman Electrician Metering (Thereafter)	33.25	33.25
	Journeyman - Electrician	33.25	33.25
1680	Meterman Single Phase	26.63	26.63
1685	Assistant Meter Tech		
1686	Assistant Meter Tech (1st 6 months)	24.19	24.19
1687	Assistant Meter Tech (2nd 6 months)	25.01	25.01
1688	Assistant Meter Tech (3rd 6 months)	26.23	26.23
1689	Assistant Meter Tech (Thereafter)	27.28	27.28
1690	Meter Reader		
1961	Meter Reader (1st 6 months)	21.49	21.49
1962	Meter Reader (2nd 6 months)	22.39	22.39
1963	Meter Reader (3rd 6 months)	23.28	23.28
1964	Meter Reader (Thereafter)	24.18	24.18
1965	Meter Reader Lead	25.85	25.85
1720	Storekeeper -Lead		
1721	Storekeeper- Lead(1st Year)	26.68	26.68
1722	Storekeeper- Lead(Thereafter)	29.77	29.77
1730	Storekeeper (1st 6 months)	22.42	22.42
1732	Storekeeper (2nd 6 months)	22.97	22.97
1733	Storekeeper (3rd 6 months)	23.81	23.81
1734	Storekeeper (Thereafter)	25.71	25.71

1740	Substation Technician - Journeyman	33.25	33.25
1741	Appr. Substation Technician (1st 6 months)	24.94	24.94
1742	Appr. Sub Station Technician (2nd 6 months)	25.76	25.76
1743	Appr. Sub Station Technician (3rd 6 months)	26.60	26.60
1744	Appr. Sub Station Technician (4th 6 months)	27.43	27.43
1745	Appr. Sub Station Technician (5th 6 months)	28.26	28.26
1746	Appr. Sub Station Technician (6th 6 months)	29.09	29.09
1747	Appr. Sub Station Technician (7th 6 months)	29.93	29.93
1748	Appr. Sub Station Technician (8th 6 months)	30.76	30.76
1750	Sub-Station – Foreman	35.39	35.39
1751	Sub Station Elect. Apparatus Technician		
1752	Sub Station Elect. App Tech (1st 6 months)	25.33	25.33
1753	Sub Station Elect. App Tech (2nd 6 months)	26.16	26.16
1754	Sub Station Elect. App Tech (3rd 6 months)	27.46	27.46
1755	Sub Station Elect. App Tech (Thereafter)	28.58	28.58
1760	Tree Trimmer		
1761	Apprentice Tree Trimmer (1st 6 months)	19.44	19.44
1762	Apprentice Tree Trimmer (2 nd 6 months)	21.06	21.06
1763	Apprentice Tree Trimmer (3 rd 6 months)	22.69	22.69
1764	Apprentice Tree Trimmer (4 th 6 months)	24.30	24.30
1765	Journeyman Tree Trimmer	25.92	25.92
1766	Tree Trimmer – Foreman	29.04	29.04
1770	Truckdriver "A"	25.47	25.47
1780	Truckdriver "B"	24.07	24.07
1785	Cabler Locator - Utility	24.75	24.75

EXHIBIT B

1790	Customer Service Representative		
1791	Customer Service Representative - Lead	22.81	22.81
1792	Customer Service Representative (1st 6 months)	17.27	17.27
1793	Customer Service Representative (2nd 6 months)	18.33	18.33
1794	Customer Service Representative (3rd 6 months)	19.34	19.34
1795	Customer Service Representative (4th 6 months)	20.41	20.41
1796	Customer Service Representative (Thereafter)	21.43	21.43
1810	Area Office Coordinator		
1811	Area Office Coordinator (1st 6 months)	17.33	17.33
1812	Area Office Coordinator (2nd 6 months)	18.64	18.64
1813	Area Office Coordinator (3rd 6 months)	19.93	19.93
1814	Area Office Coordinator (4th 6 months)	21.23	21.23
1815	Area Office Coordinator (Thereafter)	22.45	22.45
1820	Cashier		
1821	Cashier (1st 6 months)	15.08	15.08
1822	Cashier (2nd 6 months)	16.15	16.15
1823	Cashier (3rd 6 months)	17.22	17.22
1824	Cashier (4th 6 months)	18.30	18.30

1825	Cashier Thereafter	19.26	19.26
1840	General Office Clerk		
1841	General Office Clerk (1st 6 months)	13.41	13.41
1842	General Office Clerk (2nd 6 months)	14.10	14.10
1843	General Office Clerk (3rd 6 months)	14.65	14.65
1844	General Office Clerk (4th 6 months)	15.27	15.27
1845	General Office Clerk (Thereafter)	15.86	15.86
1920	Collections Representative		
1921	Collections Representative (1st 6 months)	17.27	17.27
1922	Collections Representative (2nd 6 months)	18.33	18.33
1923	Collections Representative (3rd 6 months)	19.34	19.34
1924	Collections Representative (4th 6 months)	20.41	20.41
1925	Collections Representative (Thereafter)	21.43	21.43
1930	Collections Representative - Lead		
1931	Collections Representative - Lead (1st 6 months)	19.37	19.37
1932	Collections Representative - Lead (2nd 6 months)	20.56	20.56
1933	Collections Representative - Lead (3rd 6 months)	21.71	21.71
1934	Collections Representative - Lead (4th 6 months)	22.94	22.94
1935	Collections Representative - Lead (Thereafter)	24.02	24.02
1940	Accounting Clerk		
1941	Accounting Clerk (1st six months)	17.48	17.48
1942	Accounting Clerk (2nd six months)	18.75	18.75
1943	Accounting Clerk (3rd six months)	19.92	19.92
1944	Accounting Clerk (4th six months)	21.13	21.13
1945	Accounting Clerk (Thereafter)	22.38	22.38